

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
August 27, 2018 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Jeff Valiant, Chairman; Terry Dayvolt, Paul Keller, Doris Horn, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, Molly Barnhill, Assistant Director, and Kim Kaiser, staff.

MEMBERS ABSENT: Mike Moesner

MINUTES: Upon a motion made by Doris Horn and seconded by Mike Winge the Minutes of the last regular meeting held July 23, 2018 were approved as circulated.

Chairman Jeff Valiant stated that before they started the meeting Attorney Doll would like to say something.

Attorney Doll stated there was a mix up in the publication of the notices for tonight's actions. He said it was not published as required by state statute in a timely manner. He said as a consequence, Sherri and he had talked; she is under the weather today because of therapy. He said Sherri and he spoke and what he was going to ask them to do was to call each case one by one and announce it. He said get the record made on each one, and then we are going to ask them to consider a motion, one separate motion for each of the actions tonight, to commit this case to Sherri as a Hearing Officer for the BZA. He said under the state statutes this Board can appoint a Hearing Officer to hold the required public hearing and to pass/reject or refer back to the Board the applications. He said if it was not controversial, if there was not a great deal of remonstrance against it, it was a way for the Board to help the citizens by dealing with their petitions yet this week. He said they were ready to have that; they could do it that fast. He said if it is controversial and it got to the point where there are many pros and cons for any particular application Sherri could refer it back to the September meeting. He said the Board could not advertise this and gain much time on a September hearing, if the office had done that the Board would have met within about 7 or 8 days of each other twice in September, which they really didn't want to do. He said he didn't think that was good for the applicants or for the Board members. He stated his recommendation was to call each case, verify that the applicant was present, and then if the Board was willing someone could make a motion to refer that particular application at that time to Sherri as a Hearing Officer for further deliberation. He said that was how it could be handled to move the cases legally and expeditiously. He stated if there were any

cases they didn't particularly want to do that, that was fine but the Board cannot pass on the merits accepting or rejecting because they were not advertised correctly.

Jeff Willis asked if there were any remonstrators present for or against the case.

Attorney Doll stated the staff could take their names and information and Molly's office could call them and let them know when Sherri would be hearing it as a Hearing Officer. He said that way everyone could have their public input.

Mike Winge asked what the difference was on the time if they didn't make it on this one. He asked if it had to be advertised before they could hear it.

Attorney Doll replied that was what they would have to do and what he was asking the Board to do tonight was to avoid that by passing this to a Hearing Officer.

Mike Winge asked if that would allow her to do that though.

Attorney Doll replied yes.

Mike Winge stated ok.

Chairman Valiant stated he was still a little confused. He asked if they were still going to hear and vote on.

Attorney Doll replied no, except a motion to commit it to a Hearing Officer if you choose to do that on each of these four cases.

SPECIAL USES:

BZA-SU-18-15

APPLICANT: Custom Sign & Engineering, Inc. by Scott Elpers, owner

OWNER: Gary Herr

PREMISES AFFECTED: Property located on the E side of Old Plank Rd. approximately 1,000 feet S of the intersection formed by SR 62 and Old Plank Rd, Boon Twp. 31-5-8 (*Complete legal on file*) 622 N. Old Plank Rd.

NATURE OF CASE: Applicant requests a Special Use, SU 8, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a 2' x 7' electronic message board and/or sign with flashing, moving, rotating, or intermittent light or animated messages in a "C-4" General Commercial Zoning District.

Mike Winge asked Morrie if they should ask the applicant if they would rather it go to the next meeting or to a Hearing Officer.

Attorney Doll replied you could ask anything you would like of the applicants and see there were any remonstrators for or against that was there. He stated they had texted Sherri to see if she would want to give a date and time. He said he didn't know her therapy session schedule, it was

very aggressive, but he didn't know when she would be in therapy this week. He said they might be able to announce a day she could hear the cases yet tonight.

Chairman Valiant asked that they stated their name and signed in.

Gary Herr and Chris Moore from Custom Sign were present.

Mike Winge asked if they would rather get it moved to the next meeting or get it done quicker by turning it over to a Hearing Officer.

Attorney Doll stated Sherri could hear them tomorrow or Wednesday. He said they were trying to not inconvenience any of the applicants. He said if you would agree to allow them to hear your application with a Hearing Officer it could be... he asked Molly what she said.

Mrs. Barnhill replied she could do them tomorrow or Wednesday at 9:00 a.m. or later. She said anytime throughout the day just after 9:00 a.m.

Gary Herr said he didn't care which one.

Attorney Doll asked how about 9:30 tomorrow morning.

Gary Herr that sounded fine.

Attorney Doll stated the motion would be that this matter be referred to a Hearing Officer for hearing tomorrow morning at 9:30.

Chairman Valiant asked if there were any remonstrators for or against the application.

Mike Winge made a motion to refer this application to a Hearing Officer at 9:30 tomorrow morning. Doris Horn seconded the motion and it passed unanimously.

Attorney Doll stated that would be tomorrow morning at 9:30 in the Area Plan Commission office. He said sorry for the inconvenience.

Chairman Valiant asked if the approval paperwork was done.

Mrs. Barnhill replied it is ready to go.

Chairman Valiant replied ok he just didn't want them to have to come back a third time.

BZA-SU-18-18

APPLICANT & OWNER: Dan Fritts Properties, Inc. by James Fritts, Member

PREMISES AFFECTED: Property located on the N end of Covert Ct. approximately 1020 feet N of the intersection formed by Covert Ct. and SR 662 Frontage Rd., lot number 2B in I-164 Commercial Park No. 2 Subdivision. Ohio Twp. 5345 *Covert Ct.*

NATURE OF CASE: Applicant requests a Special Use, SU 23, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick, County, IN to allow: a self-storage warehouse facility in a “C-3” Highway Commercial Zoning District with outside storage. Krista Lockyear, attorney and James Fritts were present.

Krista Lockyear stated she was sorry for being late but she did have an idea of what was going on. She said she didn’t know if there were any remonstrators there or not.

Attorney Doll asked if there were any remonstrators for that case. He said there was one. He said because of the mistake in the advertising of this, the public notices were mailed correctly it was an advertisement mistake in the paper. He stated we were precluded under State Statute from being able to pass judgement on the application. He stated that Sherri had been injured and was in recuperation so she wasn’t there but it was in good hands with Molly. He stated that Sherri was offering to hear each of the applications unless the applicants chose not to avail themselves to a Hearing Officer hearing. He said she would be available tomorrow or Wednesday of this week for that purpose. He asked if either date worked for them.

Krista Lockyear asked what time.

Attorney Doll replied that there was only one time slot that had been filled and that was 9:30 so it was pretty open. He stated they would have to see what time worked for the two of them and the owner.

Ms. Stein stated it would need to be 4:30 or 5:00.

Attorney Doll stated the office closed at 4:00 p.m.

Ms. Stein asked about on Friday.

Attorney Doll stated he didn’t know Sherri’s time schedule.

Mrs. Barnhill replied she would be gone.

Attorney Doll said she is in therapy; she had a very serious injury. He said she was in extensive therapy and it was daily, it was a mess.

Mike Winge said he heard it was outside storage so it wasn’t all inside storage.

Krista Lockyear replied correct, it was an extension of the existing storage that was already there and it was a mix. She said there would be RV and boat storage so it wasn’t all completely enclosed.

Attorney Doll asked if they had spoken with the remonstrator.

Krista Lockyear replied they had not.

Attorney Doll asked if there would be a purpose in that.

Krista Lockyear replied they would be happy to.

Ms. Stein stated her first question was what did James have in mind or what was the plan for what was behind her house.

Attorney Doll asked if he could make a suggestion. He said why don't the three of you talk in the back of the room or in the hall. He said they would take the next two cases but wouldn't leave without dealing with this matter in some way.

Krista Lockyear replied ok.

Attorney Doll stated this case was postponed until later tonight.

VARIANCES:

BZA-V-18-16

APPLICANT & OWNER: Rodney & Angela Nicholson

PREMISES AFFECTED: Property located on the W side of Hills Rd S of SR 66 approximately 2,200 feet E of the intersection formed by Hills Access Rd. and Hills Rd, Anderson Twp. Lot 1 in Nicholson Hills Subdivision (*Complete legal on file*) 1477 Hills Rd.

NATURE OF CASE: Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to all an Improvement Location Permit to be issued for a 150' wireless communications tower with a 4' arrestor (154' total height) and a 2'x3' Equipment Cabinet, all within a 40x40 lease area in "Con" Recreation & Conservancy Zoning District.

Rodney Nicholson was present.

Attorney Doll stated you heard his comments to the two cases ahead of you. He said because of a mistake in the advertisement of this application the Board was unable to act on it under state statutes tonight. He said subject to the Board agreeing by a motion and a vote his application could be referred to Ms. Rector, Executive Director of the Area Plan Commission, sometime tomorrow or Wednesday. He asked if that was his wish that the Board moved on it that quickly. He said if they don't it would be postponed until September 24, 2018 at this hour of the day. He asked what he would request.

Rodney Nicholson replied he could do tomorrow or Wednesday at any time.

Attorney Doll stated you are asking the Board to move this to a Hearing Officer.

Rodney Nicholson replied yes unless you just want to approve it right now.

Attorney Doll replied we would love to but we cannot.

Rodney Nicholson asked if he got the money back that he paid The Standard for advertising.

He was told no by several people because that was for his rezoning.

Rodney Nicholson replied he had to try because this had cost him a fortune so far.

Attorney Doll replied he understood that but his goal was to get him to the finish line by a Hearing Officer if the Board was willing to do so.

Doris Horn made a motion to pass this case to their Hearing Officer, Sherri Rector.

Attorney Doll asked Mr. Nicholson what time he would like.

Rodney Nicholson replied pick one whatever works.

Attorney Doll replied no.

Mrs. Barnhill stated at 10:00 a.m. tomorrow.

Rodney Nicholson replied he could do that if it worked for the office.

Mike Winge seconded the motion.

Chairman Valiant said very quickly before you vote. He asked if there were any remonstrators.

Ascertaining there were no remonstrators the motion carried unanimously.

BZA-V-18-17

APPLICANT: Brian Stevens Homes by Brian Stevens, owner

OWNER: Kent & Emily Brenneman

PREMISES AFFECTED: Property located on the W side of Frame Rd approximately 120 feet N of the intersection formed by Frame Rd and Blackstone Dr, Ohio Twp. 28-6-9 (*Complete legal on file*) 4355 Frame Rd.

NATURE OF CASE: Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an addition to the residence not meeting the 10' requirement between structures.

Kent Brenneman and Brian Stevens were present.

Attorney Doll stated Mr. Brenneman you heard his explanation, his tale of sorrow three times now. He asked if he would request the Board to refer this to Sherri Rector as a Hearing Officer for a hearing on this matter any time tomorrow or Wednesday other than 9:30 a.m. or 10:00 a.m. and if so when.

Kent Brenneman replied 9:45 no he was just kidding.

Attorney Doll replied they were not playing poker.

Kent Brenneman asked if Brian Stevens needed to be present.

Attorney Doll replies yes in case Sherri would want to understand the reason and precautions. He stated the ten-foot setbacks are usually for fire.

Kent Brenneman stated he wanted to add that. He said he should have done a better job explaining.

Attorney Doll replied no, this would cover it. He asked what time did he want and what day.

Kent Brenneman replied tomorrow at 11:30 a.m.

Attorney Doll stated tomorrow at 11:30 a.m.

Doris Horn made a motion to move this case to Hearing Officer, Sherri Rector tomorrow at 11:30 a.m. Jeff Willis seconded the motion and it carried unanimously.

Attorney Doll stated now we just need Ms. Lockyear.

Mike Winge stated they weren't finished yet or they would be back.

Jeff Willis asked Attorney Doll if Sherri would be ok if he left since he wasn't voting on the storage facility.

Attorney Doll replied yes.

Mike Winge replied he wasn't voting on that anyway.

Attorney Doll replied the conflict was redefined by the legislature. He said if you had a relative or something. He stated the conflict was you have a potential economic benefit or (inaudible) by the approval of the application. He said he thought this could be.

Jeff Willis stated it wasn't like there were only four Board members present.

Attorney Doll replied yes, his recommendation was he could go because he couldn't vote on it unless he wanted to be there for the motion to adjourn.

Mike Winge replied we had enough there for that. He said he could go buy some ice cream and get home early.

Attorney Doll replied it was up to him.

Chairman Valiant stated while the Board was waiting they might as well do the rest of the meeting.

ATTORNEY BUSINESS:

Attorney Doll stated he didn't have anything else.

EXECUTEVE DIRECTOR BUSINESS:

Mrs. Barnhill stated she had nothing else for the office. She said she had an update on Sherri. She stated they wanted to knock Sherri out and break her arm loose. She said she didn't want to though and that was why she had worked so hard on the therapy.

Attorney Doll stated it was his understanding that they made a mistake by keeping her in the sling too long. He said therefore her arm had calcified and she cannot use it now. He stated she had told him Saturday that her range of motion (demonstrating with his arm) was this unless she raised it with the other arm and that hurt a great deal. He said the doctor was giving her the opportunity to push through it in therapy, which was excruciatingly painful. He stated the failure to succeed meant that she would have to undergo surgery again.

Mike Winge asked if that was microscopic.

Attorney Doll replied he did not think so.

Mrs. Barnhill replied they said they would knock her out and yank her arm all of the way and just break it loose.

Attorney Doll stated he wouldn't want to be there when she woke up.

Mrs. Barnhill stated no, it was going to hurt.

Chairman Valiant stated he would not want to be there either.

Mike Winge stated he had been through it and it was painful. He said the only thing you heard from the therapist was did that hurt. He stated when you get on them enough they know when it brings tears to your eyes.

Mike Winge said he had so many side effects he wasn't able to get the steroid shots. He said he would just tough the pain because every time he would get some kind of shot he would have side effects. He stated the side effects were worse than what he had to go through so he didn't want any of them.

Mrs. Barnhill replied that was how Sherri was. She stated Sherri couldn't take hardly anything.

Mike Winge replied he had never seen the likes of it. He said the chances were so slim but if they read that bottle there must be 50–80 things that could happen and he thought he had 60-70 of them. He stated it took him nine and a half months back and forth for that.

Attorney Doll stated the Board might be homeless in September. He said he asked the Commissioner's today at the Drainage Board meeting about September meetings. He said he had understood that we were going to try to work through the remodeling.

Mrs. Barnhill replied right.

Attorney Doll stated he was told today that working through the remodel was no longer the plan. He said consequently they would consider finding another home. He stated we had to know because we had advertisements to do.

Mike Winge asked if Scales Lake Pavilion had all of that. He said he knew they had the speaker system.

Attorney Doll stated they were talking about using the ...

Terry Dayvolt stated a courtroom.

Attorney Doll replied no, the courtroom wouldn't give us the courtroom. They are talking about using the School Corporations Building.

Doris Horn stated that was what they used years ago.

Someone in the chairs stated they have an electronic audio.

Attorney Doll stated for the School Board meetings. He stated he didn't know what was going on. He said what might end up being done was not advertising the place and post someone here on the meeting night to say you had to go over there.

Mike Winge asked where was over there was that the old Buehler's building.

Attorney Doll replied yes, the Board and applicants would all be told in advance before the meeting night. He said frankly we do not know, we thought we did, we were told we would be in here but we might not have a ceiling and we might have light bulbs dangling. He said we could live with that. He stated apparently they were running new ductwork above this ceiling.

Jeff Valiant stated they were putting in all new AC and HVAC.

Attorney Doll stated the Commissioners didn't know the answer to the question this afternoon.

Mike Winge stated the people putting it in should know the answer.

Attorney Doll stated you would think the Commissioners would know it they are responsible for the County's property and they are the ones to oversee how any of this worked.

Mike Winge stated the contractor should definitely know they had done it enough times and know how long it should take.

Attorney Doll stated the start date had been delayed that was part of the problem.

Someone in the chairs asked if they were also finding other issues.

Attorney Doll replied he was sure they would. He said how much asbestos would you think was in the building.

Attorney Doll asked the staff to see if they were ready. He stated if they want this heard let's do it, if not we were not going to give them a never-ending negotiation.

Mike Winge stated Morrie if this was too complicated they would table it.

Attorney Doll agreed.

Kim Kaiser stated they said they were very close.

Attorney Doll stated either way they were going to have to go to either a Hearing Officer or the September 24, 2018 meeting. He said that was their options.

Mike Winge stated he thought they had taken long enough that the Board should table this until the next meeting because there was going to be some issues with it.

Kim Kaiser stated they were explaining what they were doing about the berm and everything.

Jeff Willis stated wasn't it already approved for that area to be developed they just had to get where they have outside parking.

Mike Winge said we don't know what all they are going to have.

Jeff Willis said they were approved for everything they were going to do with storage. He stated the thing is with storage when a storage company had outside parking and they moved one parking spot they were supposed to get a new Special Use, which is dumb.

Kim Kaiser stated they already have outside parking on the southern part of that parcel.

Jeff Valiant replied they have some on the north end too.

Mike Winge asked what the outside parking would be used for.

Jeff Valiant replied campers and boats just like every other storage place in Warrick County.

Jeff Willis stated everything that needs to be out there. He said they are the only place on that side of Warrick County that had a decent amount of outside parking.

Attorney Doll asked if this was by I-69.

Several responded yes.

Kim Kaiser replied it was located in I-64 Commercial Park.

Mrs. Barnhill stated this was like his third Special Use for outside parking. She said he just keeps growing.

Jeff Willis stated they had that rezoned a year or two ago.

Terry Dayvolt stated he keeps going north.

Jeff Willis stated he keeps going north up towards Fall Creek.

Mrs. Barnhill stated this would be as far north that he could go there.

Attorney Doll stated there was a drainage ditch through there did he go to the Drainage Board.

Mrs. Barnhill stated they had done drainage plans.

Terry Dayvolt stated he would run into the Jagoe homes next. He said that would be it for him.

Krista Lockyear stated she thought the Board was waiting for them. She said she was sorry. She said Ms. Stein did have some concerns with drainage and her client had offered to work with her. She said it was going to take them some time anyway so they would be happy to put this off until next month.

Attorney Doll stated September 24, 2018 at 6:00 p.m. here. He said maybe here. He said the County Courthouse was undergoing a remodeling. He said the Board had been told we were not losing the hearing room in September until today. He said today the Commissioners told him at a different public hearing that also uses this room on the 24th, that the Board might not be able to have that hearing here because they would be ripping all of the ceiling out. He stated you should plan on it being here. He said if they were moved, he did not know where the Board would be moved to. He stated he knew they weren't going to the courts, they might go to the Public School Corporations administrative building, but the office would contact them. He said the office needed to know Ms. Stein's contact information. He asked Krista if they were asking for this to be continued.

Krista Lockyear stated that brings up a question if they could work it out, it was a matter of getting the engineer with her and showing drainage plans. She said it would not be tomorrow or Wednesday. She said it should be in the next couple of weeks, would Sherri be available to do the Hearing Officer thing then.

Attorney Doll stated he didn't know what the problem was, he didn't know how they would make that into a motion, an alternative motion. He said number one that the Board would hear it with a Hearing Officer should they be unable to do so.

Jeff Willis stated the Hearing Officer could continue it to the meeting if she wasn't comfortable with it.

Attorney Doll stated she could.

Jeff Willis said so she would have that capability.

Attorney Doll said they could continue it but if it was a Hearing Officer.

Krista Lockyear said perhaps continue it at the discretion of the Hearing Officer if Ms. Stein and the petitioner were both there. She stated she didn't know if that would work.

Attorney Doll stated they could ask them.

Terry Dayvolt asked how they could leave an open date for that.

Chairman Valiant agreed. He said he knew that Ms. Stein had an issue of coming in during the day.

Attorney Doll said what they would do would be to continue it to a discretionary date and time to be determined by the Hearing Office with notification being given to Ms. Stein, the applicant, and the owner. He said if they chose to do that or they moved it to September 24th.

Krista Lockyear stated she would think if it didn't work, if they couldn't all be there with the Hearing Officer. She said it would stipulate that they all had to be there and they would accommodate that somehow.

Mike Winge stated he made a motion to move it to Sherri as a Special Hearing Officer with the contingency that if they couldn't all be there at the same time then it would be moved to the next regular BZA meeting on September 24th.

Doris Horn stated that worked.

Jeff Willis asked if there was a way that she couldn't be there that she could write a note.

Ms. Stein stated she could be there on the 24th. She said actually she could be there anytime during the day any day of the week she just needed a week's notice to let her

Mike Winge stated so that date could be left open for Sherri to work with them on.

Attorney Doll stated so at the discretion of the Hearing Officer as to the date and time provided that all parties would be notified. He said Ms. Stein would provide the office with her contact information. He asked if that was the motion.

Mike Winge replied yes.

Doris Horn seconded the motion. Jeff Willis stated he would be abstaining.

Chairman Valiant stated there was a motion and a second and the motion carried unanimously.

Chairman Valiant stated they had already covered the other business tonight and asked for a motion to adjourn.

Mike Winge made a motion to adjourn. The motion was seconded by Terry Dayvolt and carried unanimously. The meeting adjourned at 6:30 p.m.

EXECUTIVE DIRECTOR:

Ascertaining there was no other business the meeting adjourned at 6:31 p.m.

Jeff Valiant

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held August 27, 2018.

Molly Barnhill, Assistant Director